

REMARKS

Prior to this Response, claims 1-4 and 8-9 were pending. With this Response, claims 1-9 are cancelled, and new claims 10-28 are pending.

Rejection Under 35 U.S.C. 101

The Office Action of September 30, 2008 rejects claims 2-4, 8 and 9 as directed to non-statutory subject matter. The claims are now rewritten in a form that claims a computer readable storage medium which, when accessed by a computer, cause the computer to load the program instructions to a memory, therein creating a special purpose data structure causing the computer to operate as a specially programmed computer, executing a method of dynamic release date. It is respectfully submitted that this format meets the requirements of Section 101. Withdrawal of the Section 101 rejection is hereby requested.

Obviousness Rejections Under 35 USC 103

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goel in view of Mesaros. By this Response, claims 1-4 and 6-9 are deleted. New claims 10-28 are pending.

The Office Action concedes that the Goel reference does not explicitly disclose:

- sending information about said product and said goal to a plurality of buyer computers
 - receiving advance orders for said product from at least some of said plurality of buyer computers
 - communicating goal feedback information to said plurality of buyer computers;
- and

- releasing said product on said second release date if said goal is met or releasing said product on said first release date if said goal is not met.

It is respectfully submitted that the cited prior art references do not teach or suggest limitations of the claims as presented, in the combinations presented, for example:

Independent Claim 10: "transforming the target release date into an actual release date when the number of received advance orders from advance purchasers equals the target number of advance orders."

Claim 13: "advancing the target release date to a second, earlier revised release date when the target number of advance orders is received" in combination with the limitations of claim 10.

Claim 14: "setting a goal and, when both the goal is met and the target number of advance orders is received, advancing the target release date to a third revised release date that is earlier than the second revised release date" in combination with the limitations of claim 10.

Claim 15: "resetting the target release date to a second target release date when the target number of advance orders is not received prior to the target release date" in combination with the limitations of claim 10.

Claim 16: "offering incentives to potential purchasers to submit advance orders" in combination with the limitations of claim 10.

Claim 17: "providing goal feedback information to at least some of the advance purchasers" in combination with the limitations of claim 10.

Claim 18: "transmitting to an interface of the specially programmed computer a target release date, a target number of advance orders, and a second release date, wherein the target release date becomes an actual release date if the target number of advance

orders is received, and the second release date becomes the actual release date if the target number of advance orders is not received" in combination with the limitations of claim 10.

Claim 19: "releasing a product to advance purchasers on the actual release date, and releasing the product to other purchasers at a later release date" in combination with the limitations of claim 10.

Similarly, the cited references do not teach or suggest the limitations of claims 20-28. With respect to claim 28, which claims "one form of the product is released to advance purchasers on the actual release date, and a different form of the product is released to other purchasers at a later release date," there is no combination or suggestion in the cited prior art for these limitations of claim 28.

The Board has consistently held in the post-*KSR* era that an obviousness rejection is not appropriate when there is no evidence or suggestion of a claimed configuration. *Ex Parte Katoh et al*, Appeal 20071460, Decided May 29, 2007. Also, the Office Action has not provided a sufficient reason or explicit analysis of why the disclosures of the references should be combined. *Ex Parte Erkey et al*, Appeal 20071375, Decided May 11, 2007.

Furthermore, the Office Action does not provide sufficient rationale for drawing a conclusion of obviousness. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*).

If the Examiner needs to speak with the undersigned, his direct telephone number is 310-242-2731.

A three month extension of time to respond is hereby requested. The fee is being submitted electronically concurrently with the filing of this Response.

Prosecution of the remaining claims on the merits is hereby requested.

It is believed that no additional fee is required for the filing of this Amendment, however, if a fee is in fact due the Commissioner is authorized to charge any fees or costs to our Deposit Account No. 06-2425.

Respectfully submitted,

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